IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. No. 780 of 2006

SAFI MOHAMMED AHMED AND ORS. ... Appellants
V/S
WESTERN INDIA FOOTBALL
ASSOCIATION AND ANR. . ... Respondents

Mr. R.A. Yadav for appellants
Mr. R.M. Pandey for respondent no.1.
Mr. S. N. Gawde AGP for respondent no.2.

CORAM: D. G. KARNIK **J.**

DATE: 4th December 2006

P.C.:

1. Heard learned counsel for the appellants .
2. This appeal is directed against the judgment and order dated 4th October 2006 passed in Notice of Motion No. 3291 of 2006.
3. The appellants filed a suit against respondent no.1 for a declaration that the notice issued by it on 21st December 2004 was illegal and void and for an injunction restraining the respondents from demolishing the suit structures erected on their property. It appears that some of the structures of the appellants were demolished by the respondent no.1 during the pendency of the suit and therefore the appellants along

with other co- plaintiffs also took out motion for reconstruction of the structures already demolished. By the impugned order the trial court refused to grant mandatory relief of reconstruction of the appellants' structures which were demolished. That order is impugned in this appeal.

4. A large piece of land, which is used as football ground was allotted to respondent no.1 by the Collector of Mumbai for the purpose of promoting sports, including football. It appears that unauthorized structures were erected in part of the said ground without obtaining prior permission of either the Collector or the Planning Authority. Learned counsel for appellants submits that the structures were erected by the respondent no.1 itself and the appellants who were the employees were allowed to stay therein. This is however, denied by the counsel for the respondent no.1 who stated that the structures were unauthorizedly and illegally erected by the appellants. On account of the illegal constructions the Collector of Mumbai issued notice to respondent no.1 to remove the unauthorized structures. The respondent no.1 accordingly issued notice to all the occupants to remove the structures within 3 days, failing which the respondent no.1 would remove the structures. That notice is impugned by the appellants by filing the suit.

5. As stated earlier during the pendency of the suit respondent no.1 removed some of the structures. The appellants

therefore prayed for a mandatory injunction for reconstruction of the structures which were demolished and also restraining the demolition of the remaining structures. The trial court granted injunction against further demolition of the structures but declined to grant mandatory order for reconstruction of the structures of the appellants.

6. Learned counsel for the appellant was unable to show any document to show that the structures were erected after obtaining due permission of the respondent no.1 or the Municipal Corporation or the Collector or any authority. The land was allotted to respondent no.1 for the purpose of promoting sports. The respondent no.1 or its employees were not entitled to erect any structures without obtaining prior permission of the Collector of Mumbai. The suit structures were therefore clearly unauthorized. Since the structures were already demolished to grant mandatory injunction would to amount permit to do something which is not permitted by law. In the circumstances the trial court committed no error in not granting mandatory injunction.
7. For these reasons the appeal is dismissed summarily.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
Civil application No. 1062 of 2006
in
A. O. No. 780 of 2006

SAFI MOHAMMED AHMED AND ORS. ... Appellants
V/S
WESTERN INDIA FOOTBALL
ASSOCIATION AND ANR. . ... Respondents

Mr. R.A. Yadav for appellants
Mr. R.M. Pandey for respondent no.1.
Mr. S. N. Gawde AGP for respondent no.2.

CORAM: D. G. KARNIK **J.**

DATE: 4th December 2006

P.C.:

In view of the disposal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)